

UNITED STATES GOVERNMENT

Memorandum

TO : Director
Enforcement Division

FROM : Director
Air & Water Programs

SUBJECT: Hawaii NPDES Application

DATE: June 12, 1974

Our review of Hawaii's application for NPDES indicates serious deficiencies with regard to a comprehensive description of the program. Proposed manpower needs have not been discussed in light of a documented permit workload. Even with processing of three permits per month in FY-1974 the State participated marginally in NPDES draft review and certification procedures. All permits will probably be issued by the earliest time Hawaii could assume the program, and the second round of issuance would not begin until FY-1976. The NPDES program proposal does not identify where NPDES-related responsibilities are new and additional tasks vs on-going from FY-1974. A narrative detailing functional integration of NPDES permit processing, monitoring/compliance, and enforcement activities, as well as accountability and supervision would seem essential in the submission.

Hawaii's plan for State operation of the NPDES program proposes a 9.3 manyear level of effort with salary expenditures of nearly \$102,000. A total of 3 manyears would be devoted to drafting and processing of permits, 3 manyears for monitoring and surveillance, 1.8 manyears for laboratory support, and 1.5 for clerical support. While three individuals would be working full time on the program, the remaining 6.3 manyears are fragmented among 22 positions in 2 Branches and the laboratory (9 field inspectors, 4 chemists, 4 microbiologists, 2 engineers, and two stenographers). Hawaii's current functional organization may not allow for full consolidation of an NPDES program as a single organizational unit; regardless, we question the desirability and need for such intense fragmentation of staff.



~~And~~ ^{Aside} from the application materials, we have serious doubts as to the technical and administrative capabilities of DOH based on their past performance of permit-related activities. As identified in the recent audit, compliance monitoring and enforcement of existing permits have been non-existent. In addition, the State's certification of permits to date has been generally perfunctory. Air and Water Division's review of Hawaii NPDES permits has identified several instances where the State certification has failed to recognize or consider significant water quality standards or zones of mixing issues.

are
Until such time as these deficiencies/adequately addressed in the NPDES application and/or the 106 program plan, we would not recommend approving the application.

David P. Howehing
for Frank M. Covington

Richard O'Connell
Director of Enforcement

June 12, 1974

CASSANDRA DUNN
Regional Counsel

Hawaii Legal Authority NPDES

Attached is a copy of Regional Counsel's most recent comparison of Hawaii Legal Authority to EPA requirements for assumption of the NPDES permit program. You will note their legal authority is not complete.

The legal review is based on the following documents which have been transmitted to this office from Hawaii, either directly or through EPA personnel:

1. Act 100
2. Amendments to Act 100 contained in 1973 Legislature "H.D. 1/S.D. 1"
3. Public Health Regulations, Chapter 37

This review was made from an "inclusive" point of view. I.e., each element listed in 40 CFR-124 as a requirement of a State program was sought to be matched with an element of Hawaiian Law, no attempt was made to examine Hawaiian Law from a point of view which inquired if elements of Hawaiian Law went beyond the requirements of Part 124 to the point where they contradicted legal requirements of that Part. This latter form of review will have to be done by the Hawaii Attorney General who should certify that Hawaiian Law does not contradict EPA requirements.

CASSANDRA DUNN
Regional Counsel

by 
Alfred H. Rosen

EVALUATION OF HAWAII LEGAL AUTHORITY FOR NPDES PURPOSES

Federal Requirement 40 CFR §	Hawaii Authority Act 100 §	Public Health Regulations Chapter 37 §	Comment
124.10	33	13	1
124.21(a)	THIS SECTION EVALUATION OF THIS SECTION		1
(b)	FORTHCOMING		-
(c)			-
124.22	3,32	5 ^{FN} 1	2
124.23	3,32	6 ^{FN} 1	2
124.24(a)	3,32	7	1
(b)	3,32	7	1
(c)	3,32	7	1
(d)	3,32	7	1
124.31(a)	3,6	8 ^{FN} 1	2
(b)	3,6	8 ^{FN} 1	2
124.32(a)	3,32	9(a)	1
(b)	3,32	9(b) ^{FN} 1	2
(c)	3,32	9(c) ^{FN} 1	2
124.33(a)	3,32	10 ^{FN} 1	2
(b)	3,32	10 ^{FN} 1	2
124.34(a)	-	-	Not Applicable
(b)	-	-	Not Applicable
(c)	3,32	11(a)	1
(d)	3,32	11(b)	1
(e)	3,32	11(c)	1

1=authority present
2=no regulation required

3=specific regulation needed
4=statutory change needed

EVALUATION OF HAWAII LEGAL AUTHORITY FOR NPDES PURPOSES

Federal Requirement 40 CFR §	Hawaii Authority Act 100 §	Public Health Regulations Chapter 37 §	Comment
---------------------------------	-------------------------------	---	---------

124.35(a)	3,5,32	112(a)	1
(b)	3,5,32	112(b) FN 1	2
(c)	3,5,32	112(c) FN 1	2
(d)	3,5,32	112(d) FN 1	2

124.36	3,32	113	2
--------	------	-----	---

124.37(a)	3,32	114(a)	1
(b)	3,32	114(b) FN 1	2

124.41(a)	33	115(c) (1)	3 FN 2
(b)	33	(2)	3 FN 2
(c)	33	(3)	3 FN 2
(d)	33	(4)	3 FN 2

124.42(a) (1)	3,32	119(a) (1)	1
(2)	3,32	(2)	1
(3)	3,32	(3)	1
(4)	3,32	(4)	1
(5)	3,32	(5)	1
(6)	3,32	(6)	1
(7)	3,32	(7)	1
(b)	3,32	119(b) FN 1	2 FN 3

124.43	3,32	120 FN 1	2
--------	------	----------	---

124.44	3,32	21 FN 1	2
--------	------	---------	---

1=authority present
2=no regulation required

3=specific regulation needed
4=statutory change needed

EVALUATION OF HAWAII LEGAL AUTHORITY FOR NPDES PURPOSES

Federal Requirement 40 CFR §	Hawaii Authority Act 100 §	Public Health Regulations Chapter 37 §	Comment
124.45(a)	3,6,32	22(a)	1
(b) (1)	3,6,32	16(a) (1)	3FN 4
(2)	3,6,32	16(a) (2)	3FN 4
(3)	3,6,32	16(a) (4)	3FN 4
(c) (1)	3,10,32	22(b) (1)	1
(2)	3,10,32	(2)	1
(3)	3,10,32	(3)	1
(4)	3,10,32	(4)	1
(d) (1)	3,32	22(c) (1)	1
(2)	3,32	(2)	1
(3)	3,32	(3)	1
(e)	3,32	22(d)	1FN 5
(f)	3,32	22(e)	1
(g)	3,32	22(f)	1

124.46	3,32	23 ^{FN} 1	2
--------	------	--------------------	---

124.47	3,32	24 ^{FN} 1	2
--------	------	--------------------	---

1=authority present

2=no regulation required

3=specific regulation needed

4=statutory change needed

EVALUATION OF HAWAII LEGAL AUTHORITY FOR NPDES PURPOSES

Federal Requirement 40 CFR §	Hawaii Authority Act 100 §	Public Health Regulations Chapter 37 §	Comment
124.51	3,6(c),33	15	121
124.52(a)	3,32	25(a)	121
(b)(1)	3,32	25(b)(1) FN 1	2 (b)
(2)	3,32	(2) FN 1	2
(3)	3,32	(3) FN 1	2 (c)
(c)	3,32	25(c) FN 1	2
(d)	3,32	(d) FN 1	2 (d)
124.61(a)	3,32	26(a)	121
(b)(i)	3,32	26(b)(i)	1 (b)
(ii)	3,32	(ii)	1 (ii)
(a)	3,32	26(b)(ii)(A)	1
(b)	3,32	(B)	1
(c)	3,32	(C)	1
(d)	3,32	(D)	1
(c)		26(c)	1 (c)
124.62(a)	3,32	27(a) FN 1	122
(b)	3,32	(b) FN 1	2
(c)	3,32	(c) FN 1	2
124.63	3,32	28	121
124.64	3,32	29	121
124.71(a)(1)	3,32	-	123
(2)	3,32	-	3
(3)	3,32	-	3
(b)	3,32	-	2
(c)	3,32	-	3 (c)

1=authority present
2=no regulation required

3=specific regulation needed
4=statutory change needed

EVALUATION HAWAII LEGAL AUTHORITY FOR NPDES PURPOSES

Federal Requirement 40 CFR §	Hawaii Authority Act 100 §	Public Health Regulations Chapter 37 §	Comment
124.72(a) (b)	3,6,32	16(a) FN 1 16(a)	1 FN 6 2
124.73(a) (b) (c) (d) (e) (f) (g) (h)	8,10,11 9 12 3,10,32 8,11 11 11 11	- - - 22,33 - - - -	1 FN 7 1 1 FN 8 1 1 FN 9 1 FN 10 1 FN 11 1
129.80(a) (b) (c) (d)	3,31(6),32 3,31(6),32 3,31(6),32 -	- 3,4,15 - -	2 1 2 2
124.91(a) (b)	3,32 -	- -	2 2
124.92(a) (b) (c) (d)	3,10,32 3,10,32 3,10,32 3,10,32	22(b) 22(b) 22(b) 22(b)	3 3 3 3
124.93	-	-	FN 12
124.94(a) (b) (c) (d) (e)	§35	32(a) (b) (c) (d) (e)	1 1 1 1 1

1=authority present
2=no regulation required

3=specific regulation needed
4=statutory change needed.

HAWAII FOOTNOTES

FN 1 Although no state regulations are required by this portion of Part, 40, Hawaii has passed regulations on point.

 Those regulations are listed in this review for informational purposes.

FN 2 40 CFR 124.41 speaks in terms of absolute prohibition when it says that a "State...shall insure that no permit shall be issued authorizing any of the following discharges." The scheme of chapter 37 § 15(c) is discretionary: "The Director may deny an NPDES application...if the discharge is one of the following."

 The Hawaiian regulation must be brought to the level of total prohibition on this point.

FN 3 40 CFR 124.42(b) does not require a specific State regulation. However this section does define acts which the Director must do.

 Hawaii has limited the Directors' statement (required by 40 CFR 124.42 in cases where limitations and standards of subparagraphs (1)-(7) are applied) to those cases occurring under subparagraphs (1)-(3).

 The Director must be able to act in full compliance with the requirements of 40 CFR 124.42(b). If Hawaii believes that 19(b) is a limitation on his power it should pass a regulation fully implementing 124.42(b).

 Alternatively, Hawaii could strike 19(b) from chapter 37 as 124.42(b) does not require a State regulation.

 The situation at present, with a regulation which partially implements the Federal solution, is potentially confusing.

FN 4 40 CFR 124.45 requires that the modification, suspension or revocation provisions be "terms and conditions" of a permit. Chapter 37 §§ 16(a)(1), (2), & (4) provides the Director with a power to modify, suspend or revoke but do not incorporate these powers as "terms and conditions" of a permit. The regulations should accomplish such an incorporation.

FN 5 40 CFR 124.45(e) seems to require the industrial user to forward periodic notice to the permittee who in turn forwards the notice to the Director.

Chapter 15 § 22(d) requires the industrial user to forward notice to both the permittee and the Director but does not require the permittee to forward notice to the Director. I suggest that this deviation be corrected.

FN 6 40 CFR 124.72 requires the state to have procedures insuring that an NPDES permit can be modified, suspended or revoked for "failure or refusal of the permittee to carry out the requirements of § 124.45(c)" (allowing the Director to enter, inspect, monitor and sample premises and discharges). This insurance seems to be contained by implication in chapter 37 § 16(a)(1) (revocation for violation of condition) since § 22(b) makes allowing the Director to enter, inspect, monitor and sample a condition of such issued NPDES permit. It would be preferable for Hawaii to make this insurance explicit.

FN 7 Finding of "authority present" contingent on the interpretation that "a violation of this chapter or any rule or regulation made thereunder." As proscribed in sections 8, 11, & 12 of Act 100 would include violations of those limitations, standards, duties and requirements outlined in 124.73(a).

If this interpretation is incorrect, then Hawaii should pass a regulation specifically implementing 124.73(a)

FN 8 Finding of "authority present" is contingent on the interpretation that the phrase "any violation of this chapter or any rule or regulation made thereunder" as used in § 12 of Act 100 is, in context, substantially equivalent to "threatened or continuing violations of any NPDES permits or conditions" as used in 40 CFR 124.73(c).

If this interpretation is incorrect then Hawaii should pass a regulation specifically implementing 124.73(c).

FN 9 Finding of "authority present" contingent on the interpretation that "a violation of this chapter or any rule or regulation made thereunder." As proscribed

in sections 8, 11, & 12 of Act 100 would include violations of those limitations, standards, duties and requirements outlined in 124.73(f).

FN 10 Finding of "authority present" is contingent on the interpretation that the phrase "Part III of this chapter or any rule or regulation promulgated by the Director present to Part III of this chapter" as used in § 11(b) of Act 100 is, in context, substantially the same as "any effluent standards and limitations or water quality standards,...any NPDES permit or term or condition thereof...any NPDES filing requirements" as used in 124.73(f).

If this interpretation is incorrect, then Hawaii should pass a regulation specifically implementing 124.73(f).

FN 11 Finding of "authority present" is contingent on the interpretation that the phrase "Part III of this chapter or any rule or regulation promulgated by the department pursuant to Part III of this chapter" as used in § 11(b) of Act 100 is, in context, substantially the same as "any person...knowingly mak(ing) any false statement, representation, or certification in any NPDES form or any notice or report required by the term and conditions of any issued NPDES permit or knowingly render(ing) inaccurate any monitoring device or method required to be maintained by the Director" as used in 124.73(g).

If this interpretation is incorrect, then Hawaii should pass a regulation specifically implementing 124.73(g).

FN 12 Does Hawaii have specific authority to have a 303(e) planning process?

SUBJECT: Regional Administrator Meeting with Department of Health re FY 74 Grant Audit, May 23, 1974

FROM: Director, Pacific Islands Office

TO: THE FILES

The meeting was conducted in an informal, free exchange fashion. The Department of Health asked how EPA established the base level for spending. The Regional Administrator replied by the Governor's letter to EPA. However, this apparently was not an audited amount for FY 74 and it appeared that there was no follow-up letter to EPA concerning the correct amount. This is a matter internal to the Department of Health and Hawaii will write a letter (by Acting Governor) to correct the situation.

The meeting then turned to the State's Air Program discrepancies noted in the audit. Regarding the purchase of air monitoring equipment, the Regional Administrator asked if there had been any follow-up. Has the State of Hawaii reclaimed dollars or gotten another machine from the suppliers because of the poor workability of equipment received thus far. The Regional Administrator indicated that the State of Hawaii could order more equipment (probably to the consternation of EPA auditors). This was not being discouraged.

NO_x monitoring equipment--the Regional Administrator asked whether this has been ordered. The conversation then addressed two channels for purchasing that are available to the Department of Health and the fact that only one purchasing channel was audited; hence the shortage in spending for equipment as reflected in the audit.

SO_x regulations--Hawaii indicated that they could not enforce the regulations until they became effective. The auditors apparently felt that the State of Hawaii should have implemented regulations that would become effective immediately and have interim compliance measures until full enforcement could be achieved.

The smoke reading certification question concerned definition. This should be clearly stated in the State's response to the audit report.

The Department of Health is implementing a recommendation on which a single filing system on air compliance schedule was recommended by the audit report. This has been implemented with good results and favorable reaction from the staff.

May 23, 1974

An item occurred in the Audit Report where certain air emission stack tests were not conducted. The Department of Health indicated that the lapse of State assignees to the Air Program was the cause for the omission of stack testing.

On the NPDES item, the Audit Report reflects a lack of clear understanding of program responsibilities. The Department of Health indicated that they do not feel this is justified as they understand their responsibilities. The Federal schedules (issued) rests with the Environmental Protection Agency. The State cannot act until EPA authorizes the State to assume the NPDES. "Catch 22" is that EPA will not authorize State assumption until the State demonstrates its ability to act. The State's posture in this was nurtured under the previous Attorney General assigned to the Department of Health. The new Attorney General assigned to the Department of Health may be more receptive in allowing the State to act even though authorization has not been transmitted by EPA.

The Department of Health raised the question on whether or not the Attorney General assigned to the Department of Health can be funded from EPA grant monies. They wanted to know if this was a viable consideration. The Regional Administrator indicated that it can be proposed but not on the basis of a man years collage; it should be on the basis of a full-time position.

The Department of Health indicated that a joint agreement would be worked out internally by the AG's Office to present to EPA. There exists no agreement on compliance and enforcement at the moment. The Department of Health then asked whether or not an IPA could be assigned to the DOH NPDES program to work in Honolulu rather than in the counties of Maui and Hawaii. The DOH indicated that this had priority over those positions in the counties of Maui and Hawaii. It may be possible to satisfy the needs of all positions. DOH will regroup and review.


Melvin K. Koizumi

cc: Regional Administrator, EPA Region IX
Division Directors, EPA Region IX

SUBJECT: RA Meeting with Deputy Director of the State Budget and Finance Department, 5/23/74 DATE: May 23, 1974

FROM: Director, Pacific Islands Office

TO: THE FILES

The Deputy Director, Mr. Ono, indicated that Budget and Finance staff had looked at the Audit Report with the following reaction.

1. The Budget and Finance Department had no disagreement with the report from a mechanics standpoint. A question did come up as to how the base level for State spending was ascertained. The RA responded that this was determined by letter from the Governor to the Environmental Protection Agency. B&F will locate a copy of the letter and will pursue the matter to its satisfaction.
2. The Director of Budget and Finance, Hiram Kamaka, and the Deputy, Susumu Ono, spoke to the Acting Governor about the gravity of the situation in the Department of Health. The EPA audit report and recent circumstances (7.5 million dollar suit against the Department of Health, State of Hawaii) made the situation quite grim. The Acting Governor asked B&F what could be done in a positive vein to alleviate the situation. The Acting Governor authorized immediate action. In other words, Dr. Quisenberry is to consider corrective measures and respond on what he is proposing to do, when he is proposing to do it and if he can't do it, why can't he do it. He will also need to indicate what resources would be needed to achieve the stated goals and milestones. If the response from Dr. Quisenberry appears to be inadequate or negative, the Governor may request assistance from other agencies such as the EPA. But the situation is to be corrected and the program expedited to fruition at cost if necessary. Should the Governor request such assistance from other agencies, relationships between the Department of Health and such agencies won't be a pleasant one.
3. The Acting Governor asked that the Department of Health review the FY 75 proposed consolidated grant plan for attainability. Is it practical? Is it realistic? Are the goals attainable?
4. The effects of the manpower freeze on the consolidated grant was stated to the Acting Governor. He is aware of the situation and the effects of the freeze on the Federal funds.

May 23, 1974

5. The Acting Governor indicated that EPA's perspective as to existing and potential problems should be solicited on a macro scale involving, for example, OEQC, B&F, DPED, etc. The information exchange is to be candid; the problems to be pinpointed. It may not be advisable however, to put such information on paper. After this presentation, the meeting proceeded into a less formal exchange as follows.

A question was raised by B&F on whether or not the State could recoup the funds earmarked for retrieval by EPA. The Regional Administrator, EPA indicated that it is a possibility; however, expeditious action is necessary. B&F indicated that it is laying out a plan of action for implementation of the funds retrieval. Budget and Finance also wanted to know in the event that technical or administrative assistance is necessary, how much lead time should EPA be given before a request is presented. Regional Administrator indicated that delays on such assistance in the past has been within the State's administrative processing system.

Another question was raised by the Budget and Finance Deputy concerning the availability of EPA NPDES staff to be temporarily stationed in Hawaii working in the Department of Health answering to a Department of Health administrator. The Regional Administrator indicated that Region IX personnel were available and willing under IPA or on a special detail. Naturally this led to the question about the IPA positions requested by the State of Hawaii for Maui and Hawaii County stations. B&F wanted to know if this was a viable request. Regional Administrator indicated that it was a viable request provided the IPA employee would work for a single program manager once they are located in the respective counties. This would have to be clearly delineated before such staff would be transferred from EPA to Hawaii. The program manager should be acting under purview of the grant program.

Budget and Finance indicated that the FY 74 Consolidated Grant approval was not very timely and that the Department of Health implied that the blame is EPA's. The Regional Administrator responded that all other states in Region IX except Guam and Hawaii were approved by the deadline of June 30. Apparently there were problems. The RA does not think it was within the Region IX office but rather related more to the complexities of the State administrative procedures. As a rule, the Environmental Protection Agency prefers to have plans approved by June 30 prior to implementation on July 1.

May 23, 1974

B&F then raised the question on Department of Health's concern for areas of unclear responsibilities; in particular with regard to the NPDES program. The Regional Administrator indicated that this particular item (unclear responsibilities) has been too long a reason for inaction on the part of the Department of Health. The Regional Administrator indicated he felt it was not a problem of unclear responsibilities but rather a reticence on the part of the DOH to assume responsibilities. The Budget and Finance personnel indicated that such issue should float to the surface and be discussed candidly by EPA and DOH.

Budget and Finance asked, "Is there a deficiency in technical competence within the Division of Environmental Health?" The Regional Administrator indicated no, there appears to be quite talented, concerned and interested individuals at the staff level, however, there is a lack of desire on the part of the managers or administrators to make decisions. Certain individuals would rather do nothing than take a risk. EPA feels that the Department of Health should take responsibilities; i.e., risks, and move the program.

With regard to the FY 75 consolidated grant submission, the Regional Administrator indicated that the EPA staff will be kept in abeyance and the onus of the development of the FY 75 plan will be placed squarely on the State of Hawaii Department of Health. Budget and Finance then asked whether or not this would delay the development of the FY 75 submittal because of the time lost in assimilating subsequent EPA input to the plan. The Regional Administrator indicated this ~~fashion~~^{mode} would lend visibility to what the State of Hawaii in fact wanted to achieve and what requirements were necessitated by the Environmental Protection Agency.

The Regional Administrator asked B&F whether any action was being taken on the accounting system within the Department of Health to alleviate the double bookkeeping problem. Representatives from B&F indicated that the Department of Health stated that this would not happen again and that appropriate action had been taken. The Regional Administrator then indicated that this was a costly error and that the State B&F should be aware of other grant areas in which a similar situation may be taking place.


Melvin K. Koizumi

cc: Regional Administrator, EPA Region IX
Division Directors, EPA Region IX

SUBJECT: Meeting with Corps of Engineers, Honolulu, DATE: May 20, 1974
Hawaii, May 17, 1974

FROM: Director, Pacific Islands Office

TO: THE FILES

A meeting was held with Colonel Edelstein, John Belshe, Howard Jones, and Captain Leibbert of the Corps of Engineers; and Paul De Falco and Melvin Koizumi of the Environmental Protection Agency.

The meeting covered three items of concern:

1. The Agana Wastewater Treatment Plant, Guam
2. The Mokapu Outfall, City and County of Honolulu
3. The Hawaiian Electric Company's Kahe Power Plant, City and County of Honolulu.

Agana Wastewater Treatment Plant

The Corps of Engineers apparently considers the Agana Wastewater Treatment project quite sensitive under their criteria. During January of 1973, meetings were held to inform the agencies concerned with the project of their concern. A letter was forwarded to EPA about this time. The EPA response apparently did not meet or answer the Corps of Engineers' questions regarding the project. This letter was followed up on January 1974 with a letter to the Regional Administrator, EPA. There was an apparent lack of response to this letter. The Corps clarified an important consideration with regard to the "lead agency" role as it affects environmental impact statements. The Corps of Engineers Counsel had determined that an environmental impact statement is a foregone conclusion once a lead agency is appointed. For example, an EIS is to be prepared in each case that a lead agency is appointed or selected. The Corps indicates that this is implied in the CEQ guidelines. With regard to the Agana project, there are two alternatives which the Corps of Engineers may consider. The first is to file their own environmental impact statement on the fill which will form the site for the Agana project; or secondly they may provide EPA with additional details on the environmental consideration for the fill to be appended to the EPA assessment. The Corps cannot predict what the outcome of such an activity would be. Final recommendation may be the same.

May 20, 1974

Mokapu Outfall, City and County of Honolulu

The Corps of Engineers is quite concerned with the proposed fall 1974 starting date for the construction of the Mokapu Outfall. The Corps of Engineers is concerned that the time frame of their administrative procedures would not allow the issuing of the permit by such a starting date. This would partially depend on the environmental impact statement to be developed for the project. The Corps of Engineers feels that EPA should be the principle Federal agency on this project and the Corps wants to keep their action in consonance with the Environmental Protection Agency.

HECO Kahe Electric Power Plant, City and County of Honolulu

The Corps of Engineers queried whether EPA should prepare an EIS on the expansion of the power plant. The Regional Administrator indicated that an EIS probably is not forthcoming because the Power Plant is not considered a new source. The Corps was concerned over what constituted a new source because apparently the outfall and intake structures for the cooling water system of the Power Plant appears to be totally new in its effects on the environment. The definition of a "new source" as related to this case is presently under scrutiny by EPA Region IX staff. The Corps indicated that EPA had requested a delay on the issuance of their Section 10 permit pending the issuance of the NPDES permit for the Kahe Power Plant. This delay was requested by the Regional Administrator through Richard L. O'Connell, Director of the Enforcement Division, in a letter dated January 19, 1974. The Regional Administrator was asked about the delay but did not respond.

A final question was raised by the Corps of Engineers concerning shoreline fill operations which normally fall under the Corps of Engineers Section 10 jurisdiction. The Corps wanted to know whether EPA considered such shoreline fill operation might fall under Section 404 of PL 92-500 as it applies to the Trust Territory. If the interpretation should be that Section 404 would apply to shoreline fills, this would allow the Corps of Engineers to operate within the Trust Territory under EPA PL 92-500. Mr. De Falco indicated that the EPA Region IX Counsel would consider the matter and provide an opinion to the Regional Administrator for possible further communication to the Corps of Engineers.


Melvin K. Koizumi

cc; Regional Administrator
Region IX
Director, A&W, EPA IX
Regional Counsel, EPA IX

SUBJECT: Meetings--May 17, 1974/ Hawaii Consolidated Grant Audit FY 74 DATE: May 20, 1974

FROM: Director, Pacific Islands Office

TO: THE FILES

Meeting with Dan Aoki, Administrative Assistant to the Governor

Mr. De Falco informed Mr. Aoki about the sensitivity of the EPA audit report, a copy of which was presented to him. He informed Mr. Aoki that three copies of this report were to be distributed within the State of Hawaii--one to Mr. Aoki; one to the Budget and Finance Deputy, Mr. Susumu Ono; and one to Dr. Henri Minette of the State Department of Health.

Mr. De Falco informed Mr. Aoki that EPA may be faced with the prospect of withdrawing up to \$255,000 from the State Consolidated Grant Program in the Department of Health. The situation involved the State of Hawaii's difficulty in spending State funds up to a base level to earn the right to spend Federal funds. This resulted from poor accounting practices; i.e., double bookkeeping, and the personnel hiring freeze that exists for this election year. Mr. De Falco then went over the possibility of recouping some of these funds by redirection to OEQC or the Department of Planning and Economic Development to help support certain environmental legislation-related studies such as the Carrying Capacity Study partially funded (\$100,000) by the State Legislature.

Meeting with Mr. Susumu Ono, Deputy Director, Department of Budget and Finance

Mr. De Falco informed Mr. Ono of the sensitive nature of the EPA auditor's report that was presented to him. Mr. De Falco indicated that three copies were to be distributed to the State of Hawaii--one to Mr. Dan Aoki, Administrative Assistant to the Governor; one to Mr. Ono; and one to Dr. Henri Minette of the State Department of Health. Mr. De Falco indicated to Mr. Ono that the State of Hawaii Department of Health, Environmental Division apparently may lose upwards of \$255,000 of their consolidated grant for FY 74. Mr. Ono indicated he understood about the base level of spending and the necessity for earning Federal funds. The situation was summarized as follows by Mr. De Falco. The State did not save any money but did waste Federal funds through the set of circumstances which included poor accounting practices and a misdirected austerity program. Mr. De Falco indicated that he was not happy about withdrawing monies from Hawaii. Mr. Ono then asked whether a possibility existed for

May 20, 1974

recovery of the funds. Mr. De Falco indicated that expeditious B&F clearance on procurement requests for air program equipment by the Department of Health can be expected to recover a certain amount of the funds. A portion of the balance could also be applied to assist in the implementation of certain requirements of new environmental legislation. Another key point covered by Mr. De Falco was that leadership is needed in the Department of Health. Leadership is needed particularly in the area of decision making.

There is also a possibility that the Intergovernmental Personnel Act may be implemented to provide the needed expertise to the Department of Health. Mr. Ono then asked if IPA could be applied to upper management and administrative personnel!

Meeting with Dr. Henri Minette, Deputy Director, Environmental Programs, Department of Health

Mr. De Falco informed Dr. Minette of the sensitive nature of the audit document and that there were three copies circulating within the State under the control of Mr. Dan Aoki, Mr. Susumu Ono, and Dr. Minette. Mr. De Falco indicated to Dr. Minette certain key points of the financial aspects of the problem covered in the meeting with Mr. Ono and Mr. Aoki. Mr. De Falco then went into the audit document in detail.

Regarding the item in the audit concerning the State Permit Program lapse, Dr. Minette stated that the State statute to adopt NPDES effectively did away with the State's permit program. This was indicated by their legal counsel. The Department of Health had asked for a two-permit system during the transition period prior to assumption of the NPDES. Mr. De Falco indicated that the EPA Region IX Counsel will be requested to do an analyses on the Hawaii regulations to ascertain EPA's interpretation of the statute which did away with the State's permit program.

On the matter of a violation of an NPDES issued by the State of Hawaii; i.e., on Standard Oil of California Refinery at Barbers Point. The State indicated it did not act on the violation because the basic premise for developing the permit background data apparently was in error.

MEMO To: The Files

-3-

May 20, 1974

In the Air Program, certain carbon monoxide monitoring equipment has been ordered and the State Air Program personnel are awaiting delivery.

On the item for certification of air program smoke readers, the basic difference here was on definition of certification and recertification. Hawaii requires class work and a written test as well as field reading of smoke to qualify for a certification. Their definition of recertification involves just the reading of smoke. Apparently the auditor felt that the smoke reader should go through the entire written exam/classroom work as well as the field smoke reading.

Question was asked by Mr. De Falco on how the State would enforce their new solid waste regulation. The reply was that the State of Hawaii does not now have an acceptable facility in existence anywhere in the State. For this reason, all existing facilities would be subject to the permit requirements of the regulation. The State did indicate they had a philosophical difference with EPA in that the State does not consider the enforcement of interim compliance measures important.


Melvin K. Koizumi

cc: Regional Administrator, EPA, Region IX
Division Directors, EPA, Region IX